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IN THE

Supreme Court of the United States

OCTOBER TERM 1964

No. [redacted] 201

WILBUR PENZIEN, JAMES KANDT, LAWRENCE DE PEW, MARGARET SINGLER, et al.,
Petitioners,
v.
DIELECTRIC PRODUCTS ENGINEERING COMPANY, INC., a Michigan corporation,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OCTOBER TERM 1964

No. 1228

WILBUR PENZIEN, JAMES KANDT, LAWRENCE DE PEW, MARGARET SINGLER, et al.,
Petitioners,
v.
DIELECTRIC PRODUCTS ENGINEERING COMPANY, INC., a Michigan corporation,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

QUESTION PRESENTED

Does paragraph 110 of the collective bargaining agreement in this case, when interpreted in the light of all of the evidence introduced by Petitioners, constitute an enforceable promise to make severance payments in the absence of some further agreement between the parties?

The Michigan Supreme Court said "No."
Respondent says "No."
Petitioners say "Yes."

STATEMENT OF THE CASE

Respondent accepts Petitioners' statement of the case, except that portion subtitled "How Federal Question Presented." Petitioners have characterized the majority opinion as "in effect holding that, as a matter of federal law, parol evidence as to collective bargaining and negotiations was (in)admissible[1] to explain or complete a written collective bargaining agreement."

This characterization of the majority holding below is completely erroneous, as an examination of the record will readily disclose.

The provision of the collective bargaining agreement upon which this action was based is as follows:

> "Termination of Operations.
>
> "110. It is hereby agreed that in the event the Company takes any steps to close down operations in the Mount Clemens area plant or plants, this matter including the question of severance pay, shall become subject to negotiations upon twenty-four (24) hours' notice by either party. It is further agreed and understood that paragraph 103 shall not apply in the event of failure to reach agreement in such negotiations." (R. 221a.)

Paragraph 103 is the "no-strike" clause.

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[1] Respondent has made this correction of an obvious typographical error, with the consent of Petitioners' counsel.

When the plant was closed, the Union and the Company failed to reach agreement in the terminal negotiations. Thereafter, the Employees and the Union brought suit for severance pay.

On the strength of the language of the agreement alone, it is certain there could have been no recovery. That language says simply that if the Company takes any steps to close the plant, this matter—i.e., closing the plant—including the question of severance pay, shall become subject to negotiations upon notice by either party, and if no agreement be reached, then the operation of the no-strike clause would be suspended, leaving the parties free to strike or lockout in support of their respective positions. Such a provision conferred no right of recovery of any amount of severance pay.

However, the Employees and the Union sought to introduce testimony of the Union bargainers as to statements made by Management bargainers in the course of collective bargaining. The trial judge overruled Respondent's objections to the proffered testimony but admitted it in the absence of the jury and concluded that, even when construed in the light of that testimony, the Agreement did not contain an enforceable promise to pay severance pay, because the parties expressly left essential elements for future agreement. Accordingly, he directed a verdict of no cause for action.

The majority of the Michigan Supreme Court affirmed the trial judge, saying simply that "paragraph 110 of the collective bargaining agreement fails to bind defendant to pay severance allowances. It contains none of the material terms essential to a contractually binding understanding." 374 Mich. 444, at p. 453.

The majority opinion contains no mention of the parol evidence question. Indeed the sole significance to the limited basis of the concurrence is that the majority of the Michigan Supreme Court simply *declined to decide the parol evidence question at all.* On the contrary, the majority of the Michigan Supreme Court accepted completely the argument made by Respondent in its Brief that the court did not need to decide the parol evidence question, because the trial judge had taken the parol evidence into consideration and had concluded correctly that, even when construed in the light of that evidence, there was no enforceable agreement to pay severance pay.

Since the majority opinion of the Michigan Supreme Court did not decide the parol evidence question, that question is not presented for review by this Court.

Thus, the *sole* question presented by this record is whether paragraph 110 of the collective bargaining agreement, when interpreted in the light of all the evidence, constitutes an enforceable promise by Respondent to make severance payments in the absence of some further agreement between the parties.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

It is true, as asserted by Petitioners, that the substantive law of enforcement of collective bargaining agreements is federal law. *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448 (1947) and *Teamsters Union v. Lucas Flour Co.,* 369 U.S. 95 (1962). It is clear from these two cases that "state law, if compatible with §301, may be resorted to in order to find the rule that will best effectuate

the federal policy" and that any state law applied will be absorbed as federal law. *Textile Workers Union v. Lincoln Mills, supra,* at p. 457. Furthermore, *Teamsters Union v. Lucas Flour Co., supra,* tells us that incompatible state law must give way to federal law in order to allow uniform enforcement of particular collective bargaining provisions:

> "The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract." (369 U.S. 103, 104.)

It is likewise clear that these rules apply to severance pay agreements. *Republic Steel Corp. v. Maddox,* 379 U.S. 650 (1965).[2]

Plainly these rules do not require that every state and federal case involving interpretation of language in a collective bargaining agreement be reviewed by this Court. Review should be denied in any case such as the present one, where the only question presented is the interpretation of particular words used in the agreement and the

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[2] The issue on appeal in *Maddox* was not the basic contract language issue, but rather whether the employee was required by federal law to have exhausted his contractually provided grievance procedure as a prerequisite to suit. That issue, raised in the present case by Respondent, was not decided by the Court below because of its disposition of the case on the merits.

negotiations which produced the words. Furthermore, review should be denied where, as in this case, the actual holding of the Court below is not claimed to be in conflict with any applicable federal law or policy.

As indicated, *supra,* under *Statement of the Case,* the only issue really presented on this record is a narrow question. The majority of the Michigan Supreme Court did not decide the parol evidence question at all, but rather decided that the trial judge had correctly interpreted the contract on the basis of all of the evidence before him. Thus, the ultimate issue before this Court, if review is granted, will be whether the trial judge correctly ruled, on the basis of the testimony and other evidence that there was no complete agreement as to severance pay which would support a verdict for any amount of severance pay. So viewed, it is apparent that any decision can only have very narrow application, being limited to a specific combination of oral and written words which will almost certainly never occur in the same combination again in the future.

The decision of this question by the Court below is not in conflict with any applicable federal law or policy. The claimed conflict with *Pacific Northwest Bell Telephone Co. v. Communication Workers,* 310 F. 2d 244 (CA 9, 1962) is unfounded, since, as indicated above, the parol evidence question was by-passed altogether by the majority of the Michigan Supreme Court.

Nor does the alleged conflict between the minority opinion and other cases merit granting the petition. In the first place, the minority opinion is a holding in which a majority of the Michigan Supreme Court refused to join, and hence does not represent a decision by the *Court* below. Moreover, the claimed conflict is completely specious. The minority opinion is claimed by Petitioners to "favor a strike remedy" over a judicial remedy for breach of a collective bargaining agreement. This is utter nonsense. The minority opinion found quite clearly that "the question of

severance pay was never finalized" and that "there was no agreement for severance pay." 374 Mich. at p. 452. The most that can be said of both the minority and majority opinions is that both favor free collective bargaining over a judicial action as a mechanism for *reaching agreement* on economic matters, which is perfectly consistent with the federal labor policy.

Finally, Petitioners have cited no federal law or policy with which the holding of the Michigan Supreme Court on the merits of the case is in conflict. Respondent respectfully submits that this omission is not accidental. There simply is no conflicting authority. The trial judge specifically found that the language of paragraph 110, quoted *supra*, at p. 2, when construed in the light of the parol testimony, was an incomplete—and hence unenforceable—agreement as to severance pay and that the only enforceable promise which Respondent made was a promise to negotiate. These findings are clearly supported by the language of the agreement itself and also by the parol testimony. Petitioners have not shown any conflict between federal law applicable to such facts and the two cases relied upon by the Michigan Supreme Court, *Hansen v. Catsman*, 371 Mich. 79 (1963), and *Professional Facilities Corp. v. Marks*, 373 Mich. 673 (1964).

CONCLUSION

In conclusion, the ruling of which Petitioners seek review is this: Where a Company and a Union have agreed that the question of severance pay shall be subject to negotiations if and when the plant closes, with the parties being free to strike or lockout in the event of failure to reach agreement in those negotiations, the Union and the Em-

ployees cannot maintain a judicial action for severance payments in the absence of any subsequent agreement on the question.

Respondent respectfully submits that this ruling raises no substantial federal question, does not conflict with any applicable federal law, and is wholly in accord with federal labor policy favoring free collective bargaining. Accordingly, the Petition for a Writ of Certiorari should not be granted.

Respectfully submitted,

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